

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT EARL MARTIN)	
)	Civil Action
Petitioner)	13-cv-06739
)	
vs.)	
)	
JUSTIN ANDREW,)	
THE DISTRICT ATTORNEY OF THE)	
COUNTY OF PHILADELPHIA, and)	
THE ATTORNEY GENERAL OF THE)	
STATE OF PENNSYLVANIA)	
)	
Respondents)	

O R D E R

NOW, this 15th day of May, 2015, upon consideration of
the following documents:

Petition Under 28 U.S.C. § 2254 for Writ of
Habeas Corpus by a Person in State Custody, which
petition was filed by petitioner pro se on
March 24, 2014;

Response to Petition for Writ of Habeas Corpus,
which response was filed July 21, 2014;

Report and Recommendation of United States
Magistrate Judge Henry S. Perkin, dated and filed
July 28, 2014 ("R&R");

Motion and Objection to the Report and
Recommendation of the United States Magistrate
Judge, Henry S. Perkin, Filed on July 28th 2014,
Denying Mr. Martin Writ of Habeas Corpus,
28 U.S.C. § 2254, Filed on March 24th, 2014,
which motion was filed by petitioner October 9,
2014;

and after de novo review of the record in this matter; it
appearing that Magistrate Judge Perkin's Report and

Recommendation correctly determined the legal and factual issues presented in this case,

IT IS ORDERED that Magistrate Judge Perkin's Report and Recommendation is approved and adopted.¹

IT IS FURTHER ORDERED that petitioner's objection to Magistrate Judge Perkin's Report and Recommendation is overruled.²

¹ The extent of review of a Magistrate Judge's Report and Recommendation is committed to the discretion of the district court. Jozefick v. Shalala, 854 F.Supp. 342, 347 (M.D.Pa. 1994). However, the district court must review de novo those portions of the Report and Recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(c). The court may "accept, reject, or modify, in whole or in part, the magistrate's findings or recommendations." Brophy v. Halter, 153 F.Supp.2d 667, 669 (E.D.Pa. 2001)(Padova, J.); Rule 72.1(IV)(b) of the Rules of Civil Procedure for the United States District Court for the Eastern District of Pennsylvania.

Furthermore, district judges have wide latitude regarding how they treat recommendations of the magistrate judge. See United States v. Raddatz, 447 U.S. 667, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980). Indeed, by providing for a de novo determination, rather than a de novo hearing, Congress intended to permit a district judge, in the exercise of the court's sound discretion, the option of placing whatever reliance the court chooses to place on the magistrate judge's proposed findings and conclusions. I may accept, reject, or modify, in whole or in part, any of the findings or recommendations made by the magistrate judge. Id.

As more fully discussed in the subsequent footnote, below, I approve and adopt Magistrate Judge Perkin's Report and Recommendation and overrule petitioner's objection to the Report and Recommendation.

² Petitioner makes one objection to Magistrate Judge Perkin's R&R. Specifically he objects to the R&R, arguing that his petition should not be dismissed as time-barred because he received ineffective assistance of counsel at trial and was never advised of the elements of Murder of the second degree.

Upon review of the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody and Motion and Objection to the Report and Recommendation of the United States Magistrate Judge, Henry S. Perkin, Filed on July 28th 2014, Denying Mr. Martin Writ of Habeas Corpus, 28 U.S.C. § 2254, I conclude that the contentions in petitioner's objection

(Footnote 2 continued):

IT IS FURTHER ORDERED that the within Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody is denied without a hearing.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this procedural ruling debatable, a certificate of appealability is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall close this civil action for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER
James Knoll Gardner
United States District Judge

(Continuation of footnote 2):

are nothing more than a restatement of the claims outlined in his initial petition. See *Morgan v. Astrue*, 2009 WL 3541001 (E.D.Pa. Oct. 30, 2009) (Buckwalter, S.J.). Moreover, upon review of Magistrate Judge Perkin's Report and Recommendation, together with a de novo review of the matter, I conclude that the Report and Recommendation correctly determined the legal issues raised by petitioner.

Therefore, I approve and adopt Magistrate Judge Perkin's Report and Recommendation, and overrule petitioner's objection to the Report and Recommendation.